

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MONICA TUTUWAA and DAVID CONDUAH,

Plaintiffs,

-against-

EAST TN LOGISTICS, LLC and JIM LAKE,

Defendants.  
-----X

NOTICE OF REMOVAL

08 CIV. 6248

JUDGE KARAS

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK:**

This Notice of Removal by defendants for the removal of the above-captioned case from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York , respectfully state the following:

1. On or about June 17, 2008, an action was allegedly commenced against the defendants in the Supreme Court of the State of New York, County of Bronx, entitled Monica Tutuwaa and David Conduah v. East TN Logistics, LLC and Jim Lake, by the filing of the above pleadings with the clerk of the court. A copy of the summons and complaint is annexed hereto as Exhibit "A" and constitutes all the process, pleadings and other orders served upon the defendants-petitioners in this action.

2. Plaintiffs' causes of action against defendants are civil in nature and the District Courts of the United States have been given original jurisdiction pursuant to 28 U.S.C. §1332(a)(1) in that the amount in controversy allegedly exceeds \$75,000,

exclusive of interest and costs, and this action is between citizens of different states. Plaintiffs' complaint, which seeks relief for personal injuries and property damage, does not set forth a specific dollar amount for relief in an *ad damnum* clause. This is prohibited under CPLR §3017(c). However, based upon the injuries sustained, it is apparent that plaintiffs are seeking a sum in excess of \$75,000.

3. It is submitted that defendants may remove the state action to this Court since the Southern District embraces Bronx County, the jurisdiction where the action is pending, and such removal is permitted, pursuant to 28 U.S.C. §1441(a).

4. As the complaint reflects, the lawsuit arises from a motor vehicle accident that occurred in Rye, New York. The police accident report is annexed hereto as Exhibit "B", and, along with summons, it shows that plaintiffs are residents of Bronx, New York, that defendant East TN Logistics, LLC resides and maintains its principal place of business in Madisonville, Tennessee, and that defendant Jim Lake resides in Athens, Tennessee. As such, diversity of citizenship exists in this action, as defined by 28 U.S.C. §1332(a)(1), and the amount in controversy allegedly exceeds \$75,000.

5. In accordance with Local Rule 81.1, plaintiffs reside at 1671 Bryant Avenue, Bronx, New York 10460. Defendant East TN Logistics, LLC resides at 250 Lands Road, Madisonville, Tennessee and defendant Jim Lake resides at 700 Sherwood Avenue, Athens, Tennessee.

6. Since the initial pleadings in this action were served on or about June 17, 2008, this petition is timely within the meaning of 28 U.S.C. 1446(b).

7. Promptly after filing this Notice of Removal, defendants shall give written notice of the removal to plaintiffs through their attorney of record in the state action

and to the clerk of the court of the state action, as required by 28 U.S.C. §1446(d).

This Notice of Removal is signed below pursuant to Rule 11 of the Federal Rules of Civil Procedure.

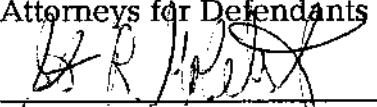
WHEREFORE, defendants-petitioners pray that the above action now pending against them in the Supreme Court of the State of New York, Bronx County, be removed to the United States District Court for the Southern District of New York.

Dated: Syosset, New York  
July 9, 2008

Respectfully Submitted,

Goldstein & Avrutine  
Attorneys for Defendants

By:

  
Steven R. Goldstein (1850)  
575 Underhill Boulevard  
Suite 140  
Syosset, New York 11791  
(516) 677-9400

To: James Newman, Esq.  
Attorney for Plaintiffs  
2815 Waterbury Avenue  
Bronx, New York 10461  
(718) 823-3122

304

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

MONICA TUTUWAA and DAVID CONDUAH,

Plaintiff designates  
Bronx County as the  
place of trial

Plaintiff,

The basis of venue is  
plaintiff's residence

-against-

SUMMONS

304449/08

EAST TN LOGISTICS, LLC and JIM LAKE,

Plaintiff's residence  
1671 Bryant Avenue, 1B  
Bronx, NY 10460

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this  
Action and to serve a copy of your answer, or, if the complaint is not served with the  
Summons, to serve a Notice of Appearance, on the plaintiff's attorney within twenty days  
after the service of this Summons, exclusive of the day of service (or within thirty days  
after the service is complete if this Summons is not personally delivered to you within the  
State of New York); and in case of your failure to appear or answer, judgment will be  
taken against you by default for the relief demanded in the complaint.

DATED: Bronx, New York  
May 14, 2008

JAMES NEWMAN, ESQ.  
Attorney for Plaintiff  
2813 Waterbury Avenue  
Bronx, NY 10461  
(718) 823-3122

TO: JIM LAKE: 700 Sherwood Avenue  
Athens, TN 37303

EAST TN LOGISTICS: 250 Lands Road  
Madisonville, TN 37354

BRONX COUNTY  
CLERK

08 MAY 29 PM 12:41

RECEIVED

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
MONICA TUTUWAA and DAVID CONDUAH,

Plaintiffs,

VERIFIED COMPLAINT

-against-

EAST TN LOGISTICS, LLC and JIM LAKE,

Defendants.  
-----X

Plaintiffs, MONICA TUTUWAA and DAVID CONDUAH by their  
attorney JAMES NEWMAN, upon information and belief, complaining of the defendants  
alleges:

FIRST CAUSE OF ACTION

1. Upon information and belief, that at all times herein mentioned  
defendant, EAST TN LOGISTICS, LLC was a foreign corporation doing business in the  
State of New York.
2. Upon information and belief, that at all times herein mentioned  
defendant, EAST TN LOGISTICS, LLC was the owner of a certain motor  
vehicle bearing plate number 50456HZ, Tennessee 2008.
3. Upon information and belief, that at all times herein mentioned  
defendant, JIM LAKE was the operator of the aforementioned vehicle and  
operated same with the consent and permission of its owner.

4. Upon information and belief, that at all times herein mentioned, defendant, JIM LAKE was employed by defendant, EAST TN LOGISTICS, LLC and acted within the scope and authority of his employment and for the benefit of his employer.

5. That at all times herein mentioned, plaintiff, MONICA TUTUWAA was the operator of a certain motor vehicle bearing plate number DVZ 9473, New York 2008 and operated same with the consent and permission of its owner, plaintiff, DAVID CONDUAAH.

6. On March 13, 2008 at approximately 6:30 p.m. the aforesaid motor vehicles came into contact with each other on Interstate 95, Rye, New York.

7. The aforesaid accident resulted from the negligence of the defendants in failing to observe the rules of the road then and there prevailing and in failing to use due care and caution in the operation of their motor vehicle.

8. Solely as a result of the negligence of the defendants, plaintiff, MONICA TUTUWAA was personally injured and suffered serious injuries as defined in Paragraph d, Section 5102 of the Comprehensive Automobile Insurance Reparations Act and she also suffered basic economic loss as well as other economic loss and special damages and severe and significant personal injuries and was otherwise damaged, in an amount in excess of the limits of the Supreme Court.

9. The limitations on liability set forth in CPLR Section 1601 do not apply to this action.

10. The limitations on liability set forth in CPLR Section 1601 do not apply to this action by reason of one or more of the exemptions set forth

STATE OF NEW YORK )

)SS

COUNTY OF BRONX )

*M. J. WAA*

, being duly sworn, deposes and says:

I have read the foregoing *complaint* and know

the contents thereof; the same is true to my own knowledge, except

as to the matters therein stated to be alleged on information and

belief, and as to those matters, I believe it to be true.

*X [Signature]*

Sworn to before me this

*14* day of *May*

200*8*

*[Signature]*  
NOTARY PUBLIC

JAMES NEWMAN  
NOTARY PUBLIC, State of New York  
No. 4745409  
Qualified in Suffolk County  
Commission Expires Aug. 31. *[Signature]*

New York State Department of Motor Vehicles  
**POLICE ACCIDENT REPORT**  
MV-104A (B/04)  
EXP. 12/31/07 **DMV COPY**

32 532 068-310 783  
32 532 068-310 783

<b>Accident Date</b> Month: 03 Day: 13 Year: 2008		<b>Day of Week</b> Thu		<b>Military Time</b> 18:34		<b>No. of Vehicles</b> 2		<b>No. Injured</b> 1		<b>No. Killed</b> 0		Not Investigated at Scene <input type="checkbox"/> Accident Reconstructed <input type="checkbox"/>		<b>Left Scene</b> <input type="checkbox"/>		<b>Police Photos</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																									
<b>VEHICLE 1</b>																		<b>VEHICLE 2</b>																		<b>BICYCLIST</b>																		<b>PEDESTRIAN</b>																		<b>OTHER PEDESTRIAN</b>																	
<b>VEHICLE 1 - Driver</b> License ID Number: 088406753 Driver Name - exactly as printed on license: LAKE, JIM K Address (Include Number & Street): 700 SHERWOOD AVE City or Town: ATHENS State: TN Zip Code: 37303																		<b>VEHICLE 2 - Driver</b> License ID Number: 883442470 Driver Name - exactly as printed on license: TUTUWAA, MONICA Address (Include Number & Street): 1671 BRYANT AVE 1B City or Town: BRONX State: NY Zip Code: 10460																																																																							
<b>Date of Birth</b> Month: 08 Day: 19 Year: 1969 Sex: M Unlicensed: <input type="checkbox"/> No. of Occupants: 1 Public Property Damaged: <input type="checkbox"/>																		<b>Date of Birth</b> Month: 08 Day: 25 Year: 1959 Sex: F Unlicensed: <input type="checkbox"/> No. of Occupants: 1 Public Property Damaged: <input type="checkbox"/>																																																																							
Name - exactly as printed on registration: EAST TN LOGISTICS LLC. Address (Include Number & Street): 250 LANDS RD City or Town: MADISONVILLE State: TN Zip Code: 37354																		Name - exactly as printed on registration: CONDUAH, DAVID E Address (Include Number & Street): 1671 BRYANT AVE 1B City or Town: BRONX State: NY Zip Code: 10460																																																																							
Plate Number: 50456HZ State of Reg: TN Vehicle Year & Make: 1996 FRHT Vehicle Type: TRAC Ins. Code: 989																		Plate Number: DVZ9473 State of Reg: NY Vehicle Year & Make: 1999 MAZD Vehicle Type: 4DSD Ins. Code: 639																																																																							
<b>Ticket/Arrest Number(s)</b> Violation Section(s)																		<b>Ticket/Arrest Number(s)</b> Violation Section(s)																																																																							
<b>Check if involved vehicle is:</b> <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.																		<b>Check if involved vehicle is:</b> <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.																		<b>Circle the diagram below that describes the accident, or draw your own diagram in space #8. Number the vehicles.</b>																																																					
<b>VEHICLE 1 DAMAGE CODES</b> Box 1 - Point of Impact: 1 2 Box 2 - Most Damage: 3 3 Enter up to three more Damage Codes: 3 4 5																		<b>VEHICLE 2 DAMAGE CODES</b> Box 1 - Point of Impact: 9 1 2 Box 2 - Most Damage: 3 1 4 5 14 Enter up to three more Damage Codes: 3 1 4 5 14																		<b>ACCIDENT DIAGRAM</b> See the second page for the accident diagram.																																																					
<b>VEHICLE DAMAGE CODING:</b> 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER																		<b>Place Where Accident Occurred:</b> County: WEST City: <input type="checkbox"/> Village: <input type="checkbox"/> Town: <input type="checkbox"/> RYE, CITY OF Road on which accident occurred: I 95 at 1) intersecting street: MPM 12.4 (Route Number or Street Name) or 2) _____ (Route Number or Street Name) _____ (Milepost, Nearest intersecting Route Number or Street Name)																																																																							
<b>Accident Description/Officer's Notes:</b> OP-V1 WAS TRAVELING SOUTHBOUND IN THE CENTER LANE ON I-95. OP-V2 WAS TRAVELING IN THE DRIVING LANE. OP-V2 MADE AN UNSAFE LANE CHANGE TO THE CENTER LANE, STRIKING V1. THE COLLISION PROPELLED V2 INTO THE MEDIAN BARRIER. NO THRUWAY PROPERTY DAMAGE TO REPORT.																																																																																									
<b>Reference Marker</b> Coordinates (if available): Latitude/Northing: 609125 Longitude/Easting: 4536810																																																																																									
<b>Officer's Rank and Signature:</b> TROO Tpr. [Signature] Print Name: W. R. Payne																		<b>Badge/ID No.:</b> 5226 <b>NCIC No.:</b> 15904 <b>Predict/Post Troop/Zone:</b> T1 <b>Station/Beat Sector:</b> 11 <b>Reviewing Officer:</b> Antonelli, J <b>Date/Time Reviewed:</b> 03/17/200 21:54																																																																							